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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,193	01/28/2004	Guillermo Silva	230276	1127

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EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 12/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/765,193	SILVA, GUILLERMO	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-8 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 1 and 6 are indefinite in the use of the word "contained" in step E in claim 1, and line 3 in claim 6. It is not known what is meant by this term, i. e. whether it is in a container or not.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leaflet No. 8, 1983, in view of Tayag (PH26114).

Leaflet No. 8, 1983 discloses that it is known to make a beverage from green coconuts (page 9, under "Green coconut drink), which contains coconut water, and green coconut meat. Claims 1 and 4 differ from the reference in the use of a spray dried base from water, sugar and coconut cream powder. However, spray dried coconut cream is known as disclosed by Tayag (abstract). The cream contains maltodextrin as in claims 4 and 5. This coconut cream powder further contains sugar. However, nothing new or unobvious is seen in the addition of sugar for its known

function of adding sweetness. Therefore, it would have been obvious to make a beverage using the spray-dried coconut cream of Tayag in the composition of Leaflet No. 8.

Claim 2 further requires that the beverage be like the jelly-like meat of an immature coconut. However, as the ingredients have been shown such a consistency would have been developed from the recipe. Therefore, it would have been obvious to make a beverage of the claimed consistency.

Claim 3 is also a product by process claim. The fact that the procedures of the reference are different than that of applicant is not a sufficient reason for allowing the product-by-process claims since the patentability of such claims is based upon the product formed and not the method by which it was produced. See In re Thorpe 227 USPQ 964. The burden is upon applicant to submit objective evidence to support their position as to the product-by-process claims. See Ex parte Jungfer 18 USPQ 2D 1796. The process by which the coconut cream powder is made is not given weight in a composition claim. Therefore, it would have been obvious to make a composition using the coconut cream of the reference absent anything new or unobvious found in using the coconut cream powder of the reference.

Claim 6 further requires that the coconut mean contains mainly water and is jelly like which is collected, bleached and mixed with preservatives. As green coconut meat is used as in the claim, the coconut meat is seen to contain as much water and to be jelly like. As the coconut meat only needs to mixed with coconut water the flesh would have been jelly like. The green coconut is fresh in the recipe, however, if canned it

would have been within the skill of the ordinary worker to bleach a material that would darken and to add preservatives for their known use. Therefore, it would have been obvious to use a coconut product as claimed.

Claim 7 further requires vanilla extract, which is a well-known ingredient used for flavoring foods and beverages. Attention is invited to In re Levin, 84 USPQ 232 and the cases cited therein, which are considered in point in the fact situation of the instant case, and wherein the Court stated on page 234 as follows:

This court has taken the position that new recipes or formulas for cooking food which involve the addition or elimination of common ingredients, or for treating them in ways which differ from the former practice, do not amount to invention, merely because it is not disclosed that, in the constantly developing art of preparing food, no one else ever did the particular thing upon which the applicant asserts his right to a patent. In all such cases, there is nothing patentable unless the applicant by a proper showing further establishes a coaction or cooperative relationship between the selected ingredients, which produces a new, unexpected, and useful function. In re Benjamin D. White, 17 C.C.P.A (Patents) 956, 39 F.2d 974, 5 USPQ 267; In re Mason et al., 33 C.C.P.A. (Patents) 1144, 156 F.2d 189, 70 USPQ 221. Therefore, it would have been obvious to use a known flavorant for its known use.

Claim 8 is to the method of making the beverage. Nothing new is seen in blending the ingredients together, which is the usual way of making a beverage, liquids, and solids are mixed together. Leaflet no. 8 discloses whipping the coconut meat and

water together. Therefore, it would have been obvious to mix ingredients in a blender to make a beverage.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 12-11-05

H. Pratt

HELEN PRATT
PRIMARY EXAMINER